

# Regulatory Overview and Updates

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US Army Corps of Engineers  
**BUILDING STRONG®**

# Corps Regulatory Program



*One of the most visible and controversial Corps programs*

*Charged with balancing environmental protection with sustainable development*



*Decisions based on current regulations, science, and best professional judgement*



**BUILDING STRONG®**

# Regulatory Mission

To protect the Nation's aquatic resources, while allowing reasonable development through fair and balanced decisions.





# Corps Regulatory Authorities

**Section 10 Rivers and Harbors Act of 1899.** Regulate all structures or work in, over or under navigable waters of the U.S.



**Section 404 Clean Water Act, 1972 & 1977.** Regulate discharge of dredged or fill material in waters of the U.S., including wetlands



# **Waters of the United States**

- **Navigable Waters**
- **Relatively permanent tributaries to navigable waters**
- **Intermittent streams**
- **Many ephemeral streams and springs**
- **Wetlands abutting the above waters**
- **Wetlands, mudflats, potholes, and playa lakes that are connected by surface hydrology to other regulated waters**
- **Impoundments of waters of the U.S.**

(Subject to requirements from recent Supreme Court cases (SWANCC, Rapanos))

# Floodplain Regulation

**Corps does not regulate the floodplain, only waters of the United States!!!!**

**Regulated by:**

- **States**
- **Federal Emergency Management Agency (FEMA)**
- **State Emergency Management Agency (SEMA)**
- **Local Officials (city, county)**

**Use Flood Insurance Rate Maps (FIRMS)**



# Corps Regulatory Process

- **Permit Evaluation** – Evaluates permit applications for the excavation and/or placement of fill material into wetlands and/or Waters of the United States.
- **Enforcement** – Administers an enforcement program to resolve unauthorized activities.
- **Compliance and Mitigation** – Ensures permit compliance and successful mitigation.



# Types of Permits

## ■ Individual Permits

- Standard Permits (SP)
  - Project-specific evaluation and authorization
  - Process involves public notice, public comment period, hearings
- Letters of Permission (LOP)
  - Less controversial than SPs
  - Minor impacts, coordinate with agencies/neighbors (no public notice)

## ■ General Permits

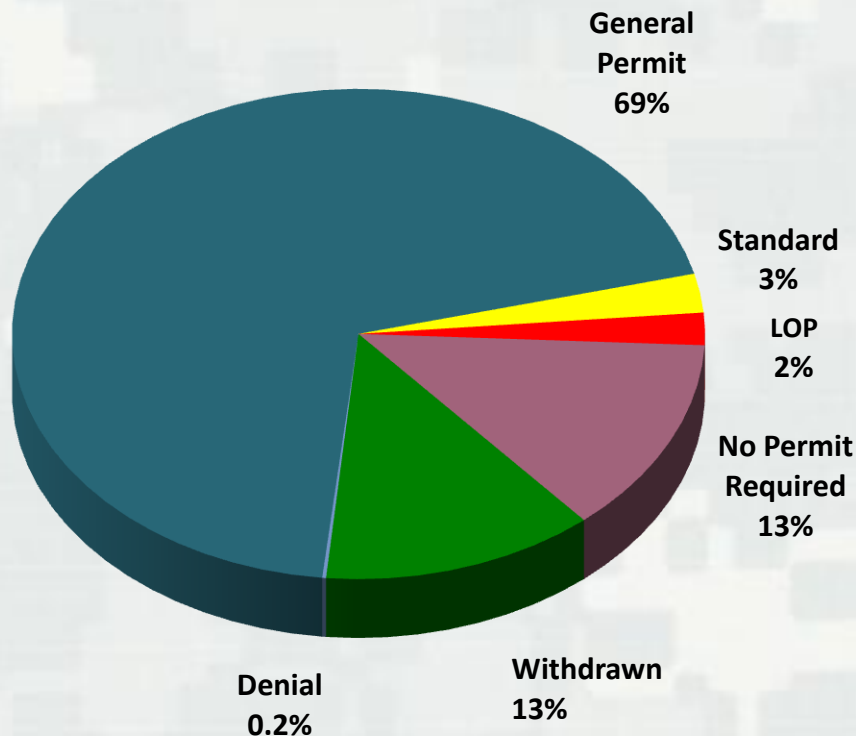
- Regional General Permits
  - Developed by Districts
  - Similar activities resulting in minimal effects; valid for 5 years
- Nationwide Permits (50)
  - Similar activities resulting in minimal impacts
  - Reissued every 5 years, account for 90% of workload





# Permit Statistics: FY 2011

FY 2011



FY11	
Standard Permits	1950
Nationwide	28755
Regional	23970
Letters of Permission	1619
Denials	134
<i>Withdrawn</i>	9715
<i>No Permit Required</i>	9877
<b>TOTAL</b>	<b>76020</b>

# Regulatory Updates

- 2012 Nationwide Permits:
- National Wetland Plant List:
- Regional Supplements
- Mitigation: Stream & Wetland Assessments

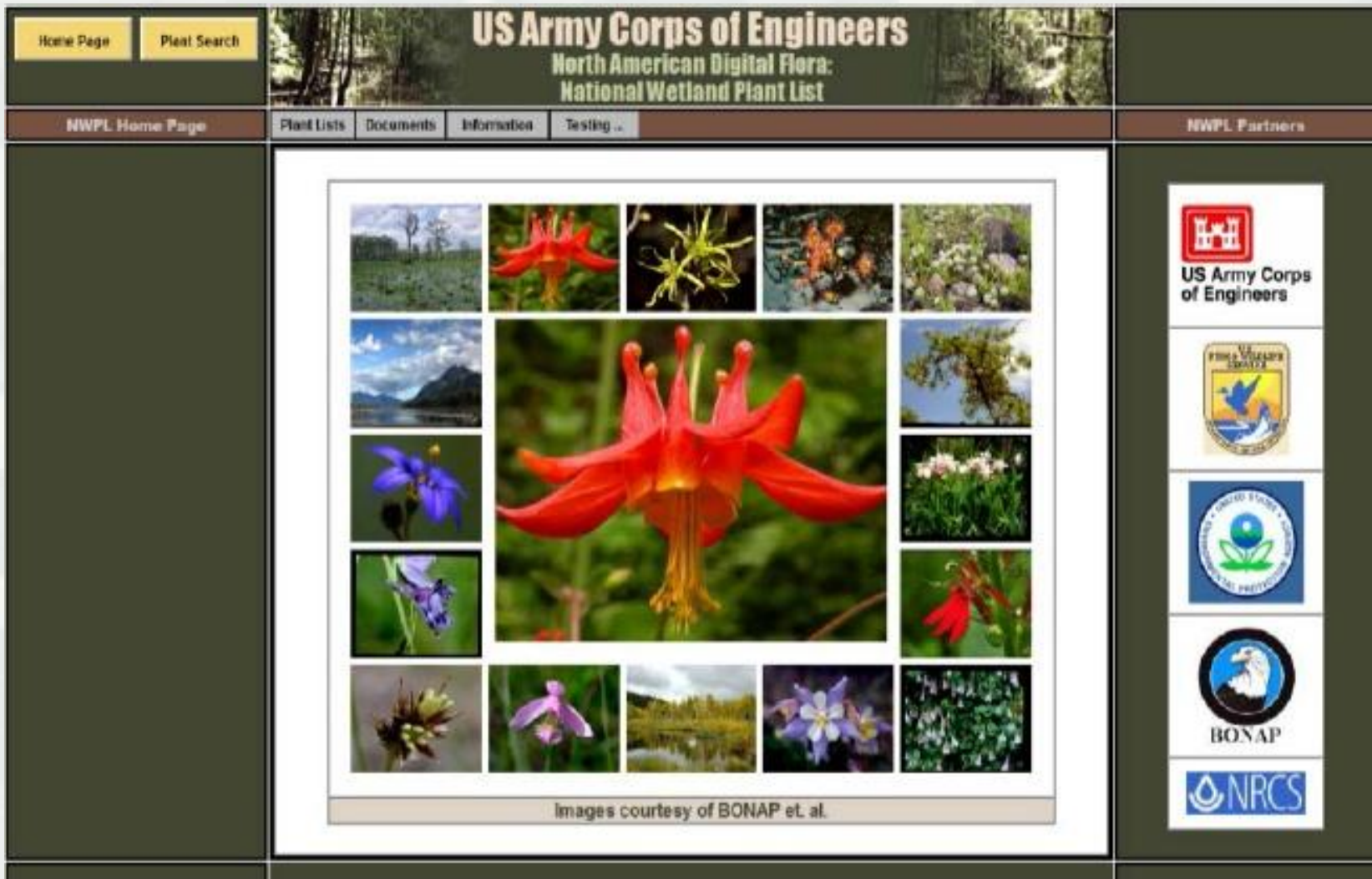


# Changes in 2012 NWP's

- Reissued 48 existing NWP's
- Reissued 23 NWP's without change and most of the remaining were reissued with minor changes
- Issued 2 new NWP's (51 & 52: renewable energy)
- Issued 3 new general conditions
- Issued 3 new definitions
- Require agency coordination for proposed losses of more than 300 linear feet of intermittent and ephemeral stream beds



# National Wetland Plant List



<http://rsgisias.crrel.usace.army.mil/apex/f?p=703:1:>

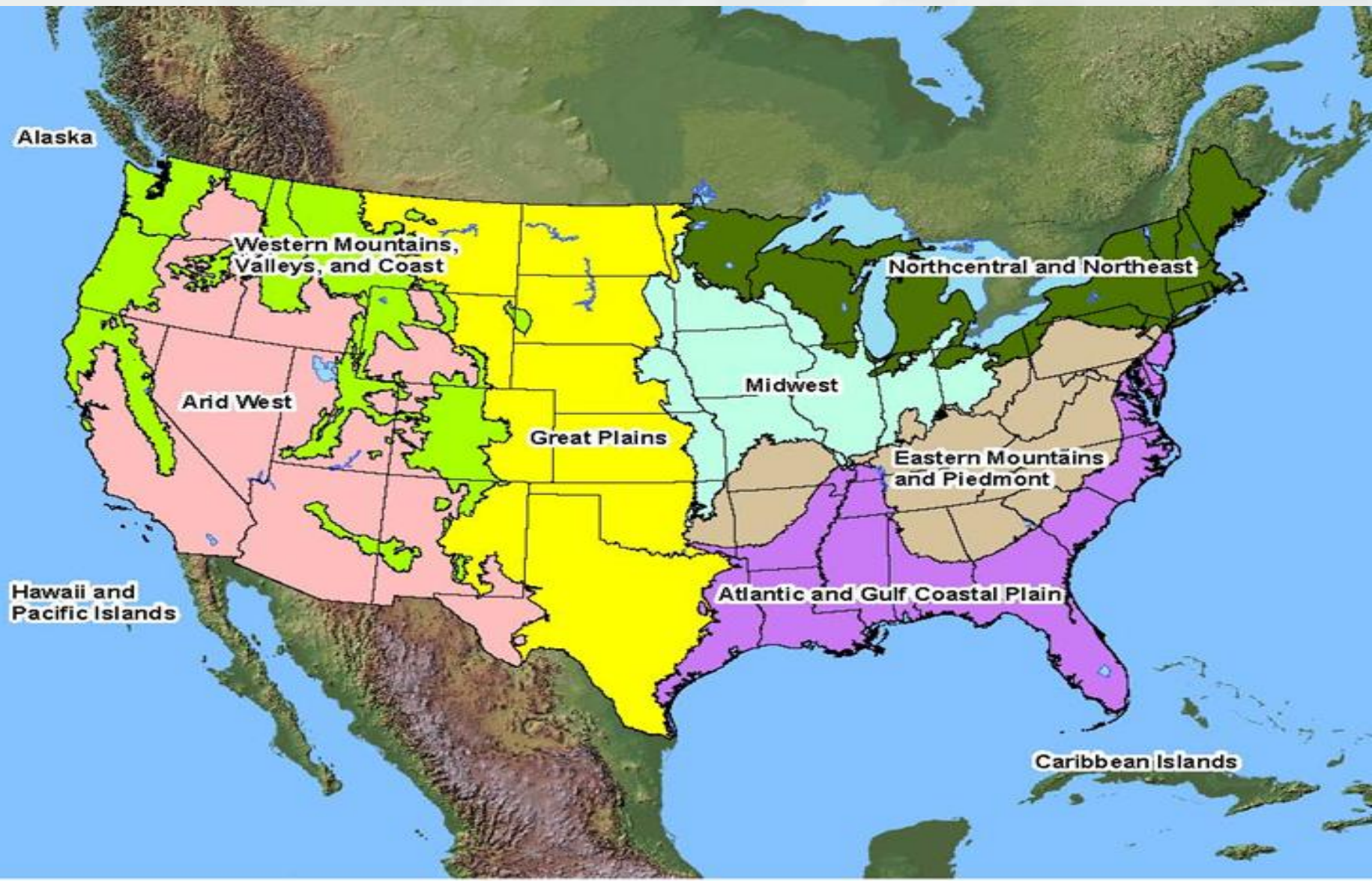


# Update to National Wetland Plant List

- Originally published in 1988 by USFWS
- Responsibility transferred to COE in 2006
- Dedicated website
- Provides procedure for future updates
- Update Scientific names
- Provide ratings to over 8,200 plants (old 6,728)
- Ecoregions match Regional Supplements to the wetland delineation manual
- +/- modifiers were removed. Five categories OBL, FACW, FAC, FACU, UPL



# Regional Supplements to the 1987 COE Wetland Delineation Manual



# Wetland/Stream Assessment Methods

## Why ?

- ▶ Mitigation rule – 33 CFR 332.8 (o)(2): “Where practical an appropriate assessment method or other suitable metric must be used to assess and describe the aquatic resource types that will be restored, established, enhanced, and/or preserved...”
- ▶ 33 CFR 332.8(o)(3): “...number of credits must reflect the difference between pre- and post-project conditions, as determined by a functional or condition assessment or other suitable metric”



# Assessment Methods

## ■ Considerations:

- ▶ One national assessment method not appropriate
- ▶ Use same method for impacts and mitigation
- ▶ Should be rapid, repeatable, based on sound science
- ▶ May rely on indirect measures of functions because direct measurements require lengthy/\$ studies
- ▶ Variation occurs within and between different aquatic resource types





# Any Questions or Comments?

